

REMARKS

Applicants have carefully studied the outstanding Office Action. The Office Action's indication that Claims 26-28, 31, 33 and 35-43 are allowed is gratefully acknowledged. Applicants believe the present amendment to be fully responsive to all points of rejection raised by the Office Action, and to place the application in condition for allowance. Favorable reconsideration of this application as amended and allowance of all claims are respectfully requested.

Claim objections

The Office Action objected to former Claim 45 because of the term "measurement.." at the end of the claim. This informality has been corrected in amended Claim 45.

Claim rejections - 35 USC § 112

Former Claims 29-30, 32 and 34 have been rejected under 35 U.S.C. 112, second paragraph, as being indefinite. Specifically, the Office Action states that "In claim 29, it is unclear whether the computational unit is part of the breath analyzer as claimed in claim 26 or whether it is separate. It is further unclear whether "the indication of the discrepancy" on line 6 of the claim is a separate indication from the indication provided by the breath analyzer in claim 26."

Applicants have amended Claim 29 to clearly recite that the computational unit is part of the apparatus for computerized breath analysis, and not part of the breath analyzer. This amendment to Claim 29 is believed to obviate the basis for the indefiniteness rejection applied to former Claims 29 and 26.

The Office Action also states that “It is further unclear whether “the indication of the discrepancy” on line 6 of the claim is a separate indication from the indication provided by the breath analyzer in claim 26.” Applicants respectfully believe that the Office Action intended to state that “it is further unclear whether the “**an** indication of the discrepancy” on line 6 of the claim is a separate indication from the indication provided by the breath analyzer in claim 26 ”(emphasis added). Furthermore, applicants wish to point out that, contrary to what the Office Action has stated, the indication recited in Claim 29 is provided by the apparatus of Claim 26 and not by the breath analyzer of Claim 26.

Applicants have amended Claim 29 to recite “said indication of the discrepancy”, which applicants believe now makes it clear that the indication of Claim 29 is the same indication as in Claim 26.

Applicants respectfully submit that the claim amendments made to Claim 29 removes the asserted indefiniteness of the claim, and that Claim 29 is now allowable. Claims 30, 32 and 34 all ultimately depend on Claim 29, and are thus also believed to be allowable.

Claim rejections - 35 USC § 102

Former Claims 44 and 45 stand rejected under 35 USC § 102(b) as being anticipated by U.S. Patent No. 5,800,361 to Rayburn. The Office Action argues that “Rayburn describes a system comprising a differential pressure flowmeter or pneumotachometer (15), a

flow signal unit (14), a gas sensor (16), a CO₂ signal unit, a processor (12), and a data display (11). Expiratory signals from the CO₂ sensor (16) and pneumotachometer (15) are digitized and processed by the processor (12) which determines variable therefrom. Those variables are used to determine a value PaCO₂, where PaCO₂ is utilized to quantify pulmonary performance and/or determine the existence of lung failure or distress (fig.1)”.

Applicants have amended Claim 45 to delete all references to non-capnographic measurements, and to substitute therefor non-breath related measurements. The Rayburn system utilizes a CO₂ partial pressure measurement and a breath flow measurement to determine an indication of ventilatory status, and, contrary to what is recited in amended Claim 44 of the present application, does not anywhere show or suggest use of a non-breath related measurement. Furthermore, in dependent Claim 45, the recitations “a breathing flow rate measurement” and “a breathing volume measurement” have been deleted, these two measurements being breath related measurements.

Applicants therefore respectfully submit that Rayburn does not teach or suggest the patentable subject matter of amended Claim 44. Amended Claim 45 is dependent on amended Claim 44 and recites further patentable matter, and is therefore also believed to be allowable over Rayburn.

New Claim

Applicants have added new Claim 46, dependent on Claim 26 and reciting additional patentable matter relating to the connection between the output of the breath analyzer and the apparatus for computerized breath analysis. Support for Claim 46 is to be found in the specification on page 17, lines 1-6, and in Fig. 5.

Conclusions

In light of the foregoing amendments to the claims and remarks, applicants respectfully submit that all of the claims as amended define patentable subject matter over the prior art, and are considered to be in condition for allowance.

Reconsideration and an early allowance of this application are therefore respectfully requested.

Respectfully submitted,

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